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CFTC Orders Cargill, Inc. to Pay a \$10 Million Civil Monetary Penalty for Providing Inaccurate Mid-Market Marks on Swaps, Which Concealed Cargill's Full Mark-up, in Violation of Swap Dealer Business Conduct and Reporting Requirements, and for Failing to Supervise Swap Dealer Employees

Washington, DC – The Commodity Futures Trading Commission (CFTC) today announced the filing and simultaneous settlement of charges against **Cargill, Inc.** (Cargill), of Minnesota, for providing mid-market marks (marks) that concealed from counterparties and its swap data repository (SDR) its full mark-up on certain swaps, in violation of the Commodity Exchange Act (CEA) and Commission Regulations.

Specifically, the CFTC Order finds that Cargill provided counterparties and the SDR inaccurate marks which had the effect of concealing up to ninety percent of Cargill's mark-up. Cargill also failed to diligently supervise its employees in connection with these inaccurate marks, and in connection with inaccurate statements made to swap counterparties. In particular, the CFTC Order finds that Cargill provided marks that concealed its full mark-up because of a concern that providing accurate marks would reduce Cargill's revenue.

The CFTC Order requires Cargill to pay a \$10 million civil monetary penalty, cease and desist from violating Section 4s(h)(1) of the CEA and Commission Regulations 23.431(a) and (d), 45.4(d)(2), and 166.3, as charged, and comply with certain remedial undertakings.

CFTC Enforcement Director Comments

CFTC Director of Enforcement James McDonald said: "The Commission will vigorously pursue those who undermine the fairness and integrity of our markets, as Cargill did by providing marks that concealed its full mark-up on the swaps at issue in this case. As the Order finds, Cargill provided its counterparties and SDR inaccurate information about its swaps, and did so because of a concern that disclosing its full markup—as it was required to do—could reduce its revenue. Participants in our markets are entitled to trust that information they receive from counterparties complies with governing laws and regulations. Thanks to the hard work of the team in this case, we uncovered the misconduct and brought this action to ensure the marks on the swaps will be accurate going forward."

The CFTC Order finds that from 2013 to the present Cargill, a provisionally registered swap dealer, provided hundreds of counterparties and its SDR with mid-market marks on thousands of complex swaps that failed to comply with the CEA and Commission Regulations. Specifically, Cargill chose to provide counterparties a mid-market mark that failed to disclose Cargill's full mark-up, as it was required to do. Instead, Cargill provided a mid-market mark that recognized only ten percent of its mark-up on the first day of the swap and amortized the remaining mark-up equally over the next sixty days. The result was that Cargill provided mid-market marks to counterparties that concealed up to ninety percent of Cargill's mark-up.

The CFTC Order further finds that Cargill used this non-compliant mark methodology because of its concern that providing counterparties marks that disclosed Cargill's full mark-up would reduce Cargill's earnings. The CFTC Order also finds that Cargill undertook this course of conduct despite concerns within Cargill that this mark methodology did not comply with the requirements of the CEA and Commission Regulations. And the CFTC Order finds that Cargill deliberately avoided raising questions about the mid-market mark with the Commission to avoid "tip[ing Cargill's] hand."

Additionally, the CFTC Order finds that for certain swaps executed based on prices derived by Cargill's ProPricing grain marketing program, Cargill on occasion inaccurately reported certain information to swap counterparties. Specifically, Cargill would disclose to swap counterparties the percentage that accounts for particular enrolled commodities were hedged. On a number of occasions since Cargill provisionally registered as a swap dealer in 2013, the accounts for particular commodities were over 100% hedged (i.e., short more than the amount of the particular enrolled commodity for that account) or less than zero percent hedged (i.e., long the particular enrolled commodity). In those instances, rather than reporting to counterparties the actual percent the accounts were hedged, Cargill employees would inaccurately report to swap counterparties that the account was exactly 100% hedged or exactly zero percent hedged, respectively. Despite the occurrence of these inaccurate communications since 2013, Cargill failed to develop systems or procedures to prevent inaccurate communications with swap counterparties.

Finally, the CFTC Order also finds that Cargill failed to diligently supervise its officers, employees, and agents relating to its business as a swap dealer. Among other failures, Cargill had no systems or procedures in place that could have prevented or corrected its inaccurate communications about ProPricing-related swaps with counterparties. Moreover, although Cargill employees were aware that Cargill's mid-market marks for complex swaps did not reveal Cargill's full mark-up, Cargill took no steps to bring its marks into compliance before they were provided to counterparties or the SDR.

The CFTC's Enforcement Division thanks the French L'Autorité des marchés financiers (AMF) for its cooperation.

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